

D.T.E. 03-63-Phase I

July 14, 2003

Investigation by the Department of Telecommunications and Energy to establish a surcharge to recover prudently incurred costs associated with the provision of wireline enhanced 911 services, relay services for TDD/TTY users, communications equipment distribution for people with disabilities, and amplified handsets at pay telephones.

APPEARANCES: Karlen J. Reed
Edward G. Bohlen
Assistant Attorneys General
Utilities Division
Office of the Attorney General
200 Portland Street, 4th Floor
Boston, MA 02114
Intervenor

Barbara Anne Sousa, Esq.
Verizon Massachusetts
185 Franklin Street, 13th Floor
Boston, MA 02110
Intervenor

Susan M. Prosnitz, General Counsel
Anne Marie Ferreira, Assistant General Counsel
Executive Office of Public Safety
One Ashburton Place
Boston, MA 02108
FOR: STATEWIDE EMERGENCY
TELECOMMUNICATIONS BOARD

and

Paul J. Fahey, Executive Director
Statewide Emergency Telecommunications Board
P.O. Box 156
Reading, MA 01867
Intervenor

George L. Fosque, Director
Emergency Communications Department
City of Cambridge
489 Broadway
Cambridge, MA 02138

and

David Hansen, President
Massachusetts Communication Supervisors Association
338 High Street
Greenfield, MA 01301

and

William August, Esq.
Epstein & August
101 Arch Street, Suite 900
Boston, MA. 02110

FOR: MASSACHUSETTS COMMUNICATION
SUPERVISORS ASSOCIATION

Intervenor

Jeffrey I. Fialky, Esq.
Jay E. Gruber, Esq.
Patricia Jacobs, Ph.D., State Director Law & Government Affairs
AT&T Communications of New England, Inc.
99 Bedford Street, Suite 420
Boston, MA 02111

Intervenor

Craig D. Dingwall, Esq.
Director and General Attorney
Sprint Communications Company L.P.
401 9th Street, N.W., Suite 400
Washington, D.C. 20004

Intervenor

William J. Rooney, Jr., General Counsel
John O. Postl, Assistant General Counsel
Global NAPs, Inc.
89 Access Road, Suite B
Norwood, MA 02062

Intervenor

Cameron F. Kerry, Esq.
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
One Financial Center
Boston, Massachusetts 02111
FOR: COMCAST CORPORATION

and

Stacey L. Parker, Esq.
Director, Regulatory Affairs
Comcast
6 Campanelli Drive
Andover, MA 01810

and

John Sullivan, Esq.
Vice President & Chief Counsel - Phone
Comcast Cable Communications, Inc.
1500 Market Street
Philadelphia, PA 19102
Intervenor

Mary C. Albert
Deputy General Counsel, Regulatory
Allegiance Telecom of Massachusetts, Inc.
1919 M Street N.W., Suite 420
Washington, D.C. 20036
Intervenor

Scott A. Sawyer, Esq.
Vice President of Regulatory Affairs
Conversent Communications of Massachusetts, LLC
222 Richmond Street, Suite 301
Providence, RI 02903
Intervenor

Andrew M. Klein, Esq.
Kelley Drye & Warren LLP
1200 19th Street, N.W.
Washington, D.C. 20036
FOR: BROADVIEW NETWORKS, INC.
Intervenor

I.	<u>INTRODUCTION</u>	Page 1
II.	<u>THE PROPOSAL</u>	Page 4
A.	<u>E911 Provisioning</u>	Page 4
B.	<u>SETB Expenses</u>	Page 5
C.	<u>Relay Services and Disabilities Access Program</u>	Page 5
D.	<u>Deficit Recovery</u>	Page 5
E.	<u>Carrier Administrative Costs</u>	Page 5
F.	<u>Uncollectible Revenues</u>	Page 6
G.	<u>Surcharge</u>	Page 6
III.	<u>POSITIONS OF THE PARTIES</u>	Page 7
A.	<u>Attorney General</u>	Page 7
B.	<u>Comcast</u>	Page 8
C.	<u>MCSA</u>	Page 8
D.	<u>AT&T</u>	Page 9
E.	<u>Sprint</u>	Page 10
F.	<u>Conversent</u>	Page 11
G.	<u>Broadview Networks</u>	Page 11
H.	<u>Verizon</u>	Page 12
I.	<u>SETB</u>	Page 14
IV.	<u>ANALYSIS AND FINDINGS</u>	Page 14
V.	<u>PHASE II</u>	Page 19
VI.	<u>ORDER</u>	Page 20

I. INTRODUCTION

On May 29, 2003, the Department of Telecommunications and Energy (“Department”) opened an investigation to establish a surcharge for the recovery of prudently incurred costs associated with the provision of wireline enhanced 911 service, relay services for TDD/TTY users, communications equipment distribution for people with disabilities, and amplified handsets for pay telephones (collectively, “E911/disabilities access”). The surcharge will recover expenses that have been incurred, are being incurred, or will be incurred in providing E911/disabilities access through December 31, 2007, and will appear on residential and business retail customers’ wireline telephone bills each month.¹ The surcharge is established pursuant to the Acts of 2002, c. 239 (“Act”), proposed regulations 220 C.M.R. § 16.00 et seq.,² and G.L. c. 159, § 12(d), and in large part replaces the prior funding mechanism of directory assistance revenues.³

The Department divided its investigation into the surcharge into two phases. In Phase I,

¹ Acts of 2002, c. 239, § 1.

² The rulemaking for the proposed regulations is docketed as D.T.E. 03-24. In a companion Order, the Department will adopt final regulations. The regulations will take effect before the surcharge takes effect. See Rulemaking by the Department of Telecommunications and Energy, pursuant to 220 C.M.R. §§ 2.00 et seq., to promulgate regulations to establish a funding mechanism for wireline Enhanced 911 services, relay services for TDD/TTY users, communications equipment distribution for people with disabilities, and amplified handsets at pay telephones, as 220 C.M.R. §§ 16.00 et seq., D.T.E. 03-24 (“Order Instituting E911 Rulemaking”).

³ Under the prior funding mechanism, E911/disabilities access was funded by charging residential subscribers for each directory assistance call that exceeded their allowance of ten free calls per month. Initially, directory assistance revenues were sufficient to support E911/disabilities access, but the program has been running a deficit since 1995. Order Instituting E911 Rulemaking at 2.

the Department will establish an interim surcharge based on estimated data received from Verizon New England Inc. d/b/a/ Verizon Massachusetts (“Verizon”) and the Statewide Emergency Telecommunications Board (“the SETB”).⁴ In Phase II, the Department will establish a permanent surcharge, based on actual data, to remain in effect through December 31, 2007. The surcharge will be adjusted in Phase II if it is found to be collecting either more or less revenue than is needed to fund E911/disabilities access. In addition, the Department has the authority to recalculate the surcharge at any time either on its own motion or upon motion of the SETB or a telecommunications provider.⁵

Verizon and the SETB submitted a joint Interim Surcharge Proposal (“Proposal”) on June 13, 2003. The Proposal recommended an interim surcharge of \$0.85 per month. The SETB filed a letter in support of the filing on June 12, 2003 (“SETB Support Letter”). The Department received initial comments on the Proposal from the Attorney General of the Commonwealth (“Attorney General”), AT&T Communications of New England, Inc. (“AT&T”), Broadview Networks, Inc. (“Broadview”), Sprint Communications Company L.P. (“Sprint”), Conversent Communications of Massachusetts, Inc. (“Conversent”), Comcast Phone of Massachusetts, Inc. f/k/a AT&T Broadband Phone of Massachusetts, LLC (“Comcast”), and the Massachusetts Communications Supervisors Association (“the MCSA”). Reply comments were received from Verizon, the SETB, and Sprint.

A public hearing was held at the Department’s offices in Boston on June 25, 2003 in

⁴ 220 C.M.R. § 16.03(5) (proposed).

⁵ 220 C.M.R. § 16.03(6) (proposed).

order to provide interested persons the opportunity to comment on the Proposal. Pursuant to G.L. c. 12, § 11E, the Attorney General filed a notice of intervention in the proceeding. In addition, Verizon, the SETB, AT&T, Broadview, Sprint, Conversent, Comcast, Allegiance Telecom of Massachusetts, Inc. (“Allegiance”), and the MCSA were granted intervenor status in the proceeding.

In its notice of this investigation, the Department stated that it would base the interim surcharge on estimated data from Verizon and the SETB. The evidentiary record in this matter consists of Verizon’s and the SETB’s June 13, 2003 Proposal, and Verizon’s and the SETB’s responses to seven Department information requests.⁶ During the public hearing, the Department incorporated by reference the comments that were received in the E911 rulemaking proceeding, D.T.E. 03-24. The Department also incorporates by reference the Massachusetts Competitive Profile, from D.T.E. 01-31,⁷ and Verizon tariff provisions M.D.T.E. No. 17, Part M, Sections 2.6.1 and 3.2.1., and M.D.T.E. No. 17, Part A, Section 4.1.2.C.

II. THE PROPOSAL

The Proposal calls for an interim surcharge of \$0.85 per month, based on estimated program costs, estimated line count data, and estimated deficit recovery for each year of the

⁶ The Department hereby moves the Proposal and the responses to the information requests into the record of this proceeding.

⁷ See Investigation by the Department of Telecommunications and Energy on its own Motion into the Appropriate Regulatory Plan to succeed Price Cap Regulation for Verizon New England, Inc. D/b/a Verizon Massachusetts’ intrastate retail telecommunications services in the Commonwealth of Massachusetts, D.T.E. 01-31, DTE-VZ RR 2.

five-year statutory funding period (Proposal at 1). The Proposal assumes that surcharge billing will begin on September 1, 2003, and that the surcharge will recover expenses incurred between January 1, 2003, when the old funding mechanism ceased, and September 1, 2003, when the new funding mechanism takes effect, by June 30, 2004 (id.). The Proposal also assumes that the recovery period for all other expenses is 52 months (id. at 2).

The Proposal breaks down the cost of the E911/disabilities access program into six different categories: (1) E911 provisioning; (2) SETB expenses; (3) relay services and disabilities access program; (4) deficit recovery; (5) carrier administrative costs; and (6) uncollectible revenues (id. at 2).

A. E911 Provisioning

The estimated expenses of E911 provisioning, including data centers, network services, network maintenance, service response centers, and capital upgrades, total \$68 million (Proposal at exh. 1). The projected expenses for capital upgrades are initial estimates based on \$85,000 for each of 800 call answering positions, and may need to be adjusted up or down depending on the outcome of the SETB's ongoing procurement process for the upgrades (Proposal at 2). All other expenses in this category are based on current rates in Verizon's Tariff No. 12, Part E, Section 2 (id.).

B. SETB Expenses

The SETB estimates that its expenses for training, personnel, outreach, and administrative costs through December 31, 2007 will total \$8,360,393 (Proposal at exh. 1).

The SETB projected its expenses based on 50 percent of its budget for fiscal year 2004. The SETB assumed five percent growth in subsequent fiscal years (Proposal at att. A, at 1). The remaining 50 percent of the SETB's expenses are charged against the wireless E911 fund (id.).

C. Relay Services and Disabilities Access Program

The expenses for telephone relay service provider costs, outreach, education, administration, quality monitoring, and specialized adaptive equipment are projected at \$48,726,222, based on current contracts and normal equipment life-spans (Proposal at 2, at exh. 1; DTE-VZ/SETB 1-2).

D. Deficit Recovery

According to Verizon, the deficit stood at \$43.1 million at the end of 2002 (Proposal at att. A, at 2; DTE-VZ/SETB 1-7). Verizon will continue to apply its directory assistance revenues to offset the deficit through 2007, and the surcharge recovers the remaining deficit, plus an annual interest rate on the deficit of the prime rate minus 50 basis points, or 4.17 percent (Proposal at att. A). Verizon projects that the surcharge will need to recover \$31.2 million in order to fully recover the deficit over the five year planning period (id.).

E. Carrier Administrative Costs

220 C.M.R. § 16.04(1) permits carriers to withhold one percent of the collected surcharge amounts for administrative costs. The Proposal estimates this amount to be \$2,107,646 (Proposal at exh. 1).

F. Uncollectible Revenues

220 C.M.R. § 16.03(8) provides that carriers are only obligated to remit the actual

amount collected from subscribers to the SETB. The estimated cost of uncollectible surcharge revenues is \$5,023,784 (Proposal at exh. 1). Verizon estimated this number by applying a composite uncollectibles rate, based on actual 2002 uncollectibles, to the estimated costs to be recovered (DTE-VZ/SETB 1-6).

G. Surcharge

The total cost of the E911/disabilities access program through December 31, 2007 is estimated at \$217,896,007 (Proposal at exh. 1). Verizon's estimate of statewide access lines, based on its February 2003 update to the Massachusetts Competitive Profile in D.T.E. 01-31, is 5,087,535 (Proposal at att. A at 2; at exh. 1). The Proposal assumes a 52 month recovery period beginning on September 1, 2003, and ending in December 2007 (Proposal at att. A at 2).⁸ At the Department's request, the Proposal includes an expense and revenue analysis comparing the proposed \$0.85 surcharge with \$0.75, \$0.80, \$0.90, and \$0.95 surcharges. According to the Proposal, a \$0.75 surcharge would leave the program in deficit every year, with a cumulative deficit of over \$19,000,000 remaining at the end of 2007, and an \$0.80 surcharge would result in a deficit of over \$6,000,000 (Proposal at exh. 2). The proposed \$0.85 surcharge would result in a balance of \$6,973,040 at the end of 2007, and a \$0.90 surcharge would result in an over-recovery of more than \$20,000,000 (id.).

III. POSITIONS OF THE PARTIES

A. Attorney General

⁸ [(Program costs)/(access lines)]/(recovery period) = 0.824, or an \$0.85 per month surcharge when rounded to the nearest nickel.

The Attorney General contends that Verizon and the SETB have not explained why an interim rate should be based on costs incurred during the full five year statutory funding period, and that in order to avoid speculation about future costs, the interim surcharge should be based only on estimated costs for fiscal years⁹ 2003 and 2004 (Attorney General Comments at 3-4).

In addition, the Attorney General argues that the Department cannot rely on the unapproved and incomplete 1999 directory assistance audit to support Verizon's deficit estimate, and that the Department should defer recovery of the deficit pending a thorough examination of the deficit in evidentiary hearings (*id.* at 4). The Attorney General contends that the Proposal's deficit calculation does not include any offset for directory assistance revenues received by Verizon or any other carrier, and that the Department should follow the recommendations in the SETB Support Letter and offset the deficit recovery with past and future directory assistance revenues (*id.*). The Attorney General contends that neither the Act nor the Department's proposed rules permit recovery of carrier's bad debt, and that the Department should strike the uncollectible revenues portion of the surcharge (*id.* at n.3). The Attorney General asserts that the Department should reduce the interim surcharge from \$0.85 to \$0.64 by deferring recovery of the deficit and of capital expenditures for fiscal 2005 and beyond, and by disallowing unauthorized offsets for uncollectibles (*id.* at 3).

B. Comcast

Comcast argues that Verizon has failed to provide any documentation in support of the claimed \$43.1 million deficit (Comcast Comments at 2). Comcast further asserts that the

⁹ The Commonwealth's fiscal year runs from July 1 through June 30.

Proposal does not reflect additional revenues that Verizon is attempting to collect from competitive local exchange carriers (“CLECs”), in the form of back-billed infrastructure charges (id.).¹⁰ Comcast contends that the Proposal does not explain whether the back-billed infrastructure charges were included in the deficit calculation, and asserts that Verizon should be required to explain whether amounts collected will be used to offset the deficit (id.). Comcast also requests that the Department examine Verizon’s authority to back-bill CLECs for infrastructure charges (id. at 3).

Comcast argues that the ratepayers must not be burdened with an artificially high interim surcharge based on an inflated deficit (id.). Even if the majority of ratepayers would benefit from a later true-up of the surcharge, Comcast argues that a true-up of the surcharge will result in unnecessary billing changes, the possibility for error, and customer confusion (id.). For that reason, Comcast argues that Verizon must resolve all questions concerning the deficit before the surcharge is imposed (id.).

C. MCSA

The MCSA notes that since January 1, 2003, no funds have been collected in support of the E911/disabilities access program, which is a fundamental component of public safety in Massachusetts (MCSA Comments at 2). The MCSA strongly supports the Proposal’s plan to implement the interim surcharge no later than September 1, 2003, and argues that the interim surcharge is a prudent way of ensuring funding for a vital public safety program during the

¹⁰ In April 2003, Verizon back-billed CLECs for unbilled E911 infrastructure charges under Verizon’s Tariff No. 17, Part M, Sections 2.6.1 and 3.2.1. (DTE-VZ/SETB 1-5.) The infrastructure tariff provision went into effect in 2000.

pendency of the Department's investigation into the permanent surcharge (id.). The MCSA commends the Proposal for including funds to support pre-service training for newly-hired E911 operators, and argues that the SETB should develop a certification program for pre-service training programs so that public safety answering points ("PSAPs")¹¹ can join together and conduct their own pre-service training programs in compliance with state standards (id. at 3). The MCSA also argues that the Proposal should include funds targeted to in-service training and continuing education for E911 operators, as well as E911 call processing support equipment and materials (id. at 6).

D. AT&T

AT&T argues that an independent audit must be performed in order to verify the amount of the deficit claimed in the Proposal (AT&T Comments at 3). AT&T avers that because Verizon's estimate of the deficit increased by \$14.5 million in one year, the directory assistance audit¹² performed five years ago is of doubtful value today, and therefore forming an opinion on the deficit requires a "leap of faith" (id.).

In addition, AT&T argues that the calculation of the surcharge should take into account

¹¹ A PSAP is a facility assigned the responsibility of receiving wireline 911 calls and, as appropriate, directly dispatching emergency response services or transferring or relaying wireline emergency 911 calls to other public or private safety agencies.

¹² In D.P.U. 91-68, the Department ordered that an audit of Verizon's directory assistance accounting process should be conducted at one or more points during the ten-year reconciliation period. See Investigation by the Department on its own motion into the propriety of tariff D.P.U. Mass. No. 10, Part A, Section 5, Fifth revision of Page 81 and Fourth Revision of Page 82, filed with the Department on March 8, 1991, to become effective April 7, 1991, by New England Telephone and Telegraph Company, D.P.U. 91-68 (1991).

all revenue Verizon receives for E911 (id.). AT&T contends that the Proposal does not account for E911 revenues that Verizon receives from CLECs pursuant to tariff provisions and contractual agreements (id.). AT&T argues that the Proposal also fails to account for annual assessments on carriers by the SETB pursuant to G.L. c. 6A, § 18F (id. at 4).¹³ AT&T contends that the new statutory funding mechanism replaces all prior E911 funding sources, and that E911-related charges assessed on CLECs through tariffs and interconnection agreements would result in double recovery and are therefore no longer required (id.).

E. Sprint

Sprint argues that the Proposal's capital upgrade estimate is excessive and likely inflated by wireless E911 costs (Sprint Comments at 5). Sprint asserts that if wireless E911 costs are identified and removed from the Proposal's costs estimates, the resulting wireline surcharge will be substantially lower than \$0.85 (id.). Further, Sprint avers that the Proposal's static line count estimate could skew the analysis and result in an inaccurate surcharge, and that line counts should be updated at least annually, and the surcharge adjusted as necessary (id. at 5-6). Finally, Sprint argues that wireless customers in Massachusetts already pay an E911 surcharge, and that therefore any surcharge imposed as a result of the instant investigation should not apply to wireless carriers or wireless customers (id. at 4). Sprint concurs with the comments of

¹³ G.L. c. 6A, § 18F provides in relevant part: After consultation with the department of telecommunications and energy, the secretary of public safety is hereby authorized to make an assessment proportionally against each telephone company based on the intrastate operating revenues of each said company derived from sales within the commonwealth as shown in the annual report of said companies to the department of telecommunications and energy.

AT&T and the Attorney General regarding the need for a full investigation of the deficit including a possible audit of the data, and argues that it is impossible to implement an accurate surcharge without such an investigation (Sprint Reply Comments at 3).

F. Conversent

Conversent argues that it is unclear what effect Verizon's back-billing of E911 infrastructure charges will have on the deficit, and that Conversent has no idea how the Proposal's deficit estimate was calculated (Conversent Comments at 2). Conversent contends that the Department should not approve back-billing for E911 infrastructure charges that are more than 90 days old unless Verizon has a very compelling reason for not billing these charges when they were current (id.). Conversent contends that the Department must ensure that past and future costs of E911 services are implemented in a fair and reasonable manner (id.).

G. Broadview Networks

Broadview argues that Verizon should be precluded from back-billing CLECs the E911 infrastructure charge until the Department has concluded its investigation in the instant proceeding (id. at 2).

H. Verizon

Verizon argues that the proposed interim surcharge of \$0.85 is a reasonable starting point that is fully supported by the estimated cost data provided in the Proposal (Verizon Reply Comments at 2). Verizon contends that deferring the recovery of the deficit pending the

Department's investigation in Phase II would result in an under-recovery of revenues, and would result in a substantial increase in the surcharge in subsequent years in order to recover the E911/disabilities access program costs as required by law (id. at 4).¹⁴ Verizon avers that basing the interim surcharge only on expenses incurred through fiscal 2004 and deferring recovery for capital costs until the years in which those costs are incurred would result in a dramatic increase in the surcharge from 2005 through 2007, and that capital costs should be recovered throughout the five year recovery period in order to avoid a sudden spike in the surcharge (id. at 9). Verizon also argues that it did not include wireless E911 costs in its estimated capital costs (id. at 10 n.7).

In response to the Attorney General's contention that the Proposal does not indicate whether the deficit includes an offset for directory assistance revenues, Verizon argues that the Proposal is explicit that the deficit calculation includes such an offset, and Verizon includes a projection of its directory assistance revenues through 2007 with its Reply Comments¹⁵ (id. at 5). In addition, Verizon argues that it would be premature to adjust the deficit to account for revenues from back-billed E911 infrastructure charges, as Verizon has not yet collected any money from CLECs as a result of the back-billing (id. at 6). Verizon states that it will track the back-billed amounts and apply the amounts collected to offset E911 expenses already incurred (id.). With regard to the annual assessments on carriers which the SETB is authorized to make

¹⁴ Verizon argues that the Act requires the total recovery of E911/disabilities access program costs by December 31, 2007 (Verizon Reply Comments at 4).

¹⁵ Verizon's attachment to its Reply Comments, projecting its residential directory assistance revenues and future deficit, is not part of the record in this proceeding.

pursuant to G.L. c. 6A § 18F, Verizon contends that SETB has not made this assessment on any carrier other than Verizon; therefore, the assessment has not provided any additional revenues which can be used to offset the deficit (id. at 6-7).

Verizon avers that an additional audit of the deficit is unnecessary, because in 1999 an independent auditor found that Verizon's method of tracking directory assistance revenues and E911 expenses was fully compliant with the Department's requirements and that the amounts reported were reported accurately (id.). Verizon argues that it has been using the same Department-approved tracking method in all subsequent tracking reports (id.).

Verizon contends that the uncollectible factor is permitted pursuant to the Department's proposed regulations, and that eliminating the uncollectible factor would result in the overestimation of revenues from the proposed surcharge, thus grossly understating the level of surcharge necessary to fund the program (id. at 8). Verizon argues that its uncollectible revenues estimate is based on its experience with residential and business uncollectibles in Massachusetts (id.). Finally, Verizon argues that the MCSA's arguments in favor of additional expenditures for expanded E911 training and reverse E911 service are beyond the scope of this investigation and beyond the scope of the Department's authority under the law, as the SETB is solely responsible for decisions related to capital expenditures and training for E911 programs (id., citing G.L. c. 6A, § 18(d)).

I. SETB

The SETB contends that the interim surcharge should be based on estimated expenses, including estimated capital expenditures, through December 2007 in order to reduce the

potential impact on ratepayers which might occur if the SETB were required to request a recalculation of the surcharge to account for increased capital expenditures (SETB Reply Comments at 2). The SETB also argues that its capital upgrade cost estimate of \$85,000 per PSAP position is neither inflated nor excessive, but reflects the cost of replacing existing ten year-old wireline equipment with new technological approaches (id. at 3). Furthermore, the SETB argues that it has differentiated between wireline E911 costs and wireless E911 costs, and that this differentiation of costs was taken into account when calculating the surcharge (id. at 2-3). The SETB maintains that, at present, no wireless 911 calls go to wireline PSAPs (id.).

IV. ANALYSIS AND FINDINGS

With this Order, the Department implements the new funding mechanism for E911/disabilities access as mandated by the Act, thus ensuring that the E911 system remains fully operational and available in the event of an emergency, and that consumers with disabilities continue to have access to the telecommunications network. The interim surcharge will remain in effect until the Department sets the permanent surcharge at the conclusion of Phase II. Because E911/disabilities access has been operating without a funding source since January 1, 2003, the program continues to accumulate a deficit, and it is imperative that a surcharge be implemented as soon as possible.

The Proposal assumes that the interim surcharge will be implemented as of September 1, 2003. No party objected to this start date, and the MCSA supports the implementation of the surcharge immediately, but no later than September 1, 2003 (MCSA Comments at 2). As discussed in the MCSA comments supra, there is currently no funding

mechanism in place to support the E911/disabilities access program. In order that these vital public safety programs receive the funding they need and in order to avoid accumulating an ever-greater deficit, the Department determines that local exchange carriers in Massachusetts shall begin applying the interim surcharge, in the amount as determined below, on all wireline retail residential and business voice grade lines by September 1, 2003.¹⁶

The MCSA also argues supra that the Department should include additional expenses for pre-service and in-service E911 operator training, a pre-service training certification program, and additional E911 call processing support equipment and materials. The Department agrees with Verizon that the MCSA's argument is both outside the scope of this investigation¹⁷ and beyond the limits of the Department's authority. Although the Act gives the Department the authority to implement a surcharge in order to recover the expenses of wireline E911, there is nothing in the Act which diminishes the SETB's sole statutory authority to determine the types of equipment, training, and support for which expenditures are necessary. Pursuant to G.L. c. 6A, §§ 18B-18D, the SETB has been charged with administering E911 in Massachusetts, and the Department does not have the authority to supplant the SETB's expertise when it comes to determining necessary training programs and equipment purchases. Therefore, while the Department will require documentation from the SETB in Phase II to support the reasonableness of its proposed expenditures, the Department lacks the jurisdiction to

¹⁶ In response to the concerns raised by Sprint, the Department emphasizes that the interim surcharge ordered herein does not apply to wireless carriers or their customers.

¹⁷ For the same reason, the comments made by Mr. Hartmut Teuber at the public hearing held on June 25, 2003 are also outside the scope of this investigation.

tell the SETB what categories of expenditure it is required to propose.

Concerning the Attorney General's argument that no recovery should be permitted for uncollectible surcharge revenues, the Department's proposed rules specifically contemplate the recovery of uncollectible revenues. Proposed rule 220 C.M.R. § 16.03 (8) provides in relevant part:

Other Fees. Telecommunications companies shall only be obligated to remit the actual amount collected from subscribers to the SETB.

Because carriers are required to remit surcharge amounts collected, rather than surcharge amounts billed, uncollected surcharges would create a revenue shortfall unless factored into the calculation of the surcharge. The uncollectible revenues portion of the surcharge refers only to uncollectible surcharge revenues, not to carriers' overall bad debt. The Department finds that the uncollectibles portion of the surcharge is a reasonable way of ensuring full funding for the program.

The remainder of the parties' comments focused primarily on the calculation of the deficit and its inclusion in the Proposal, with the corollary issue of back-billed E911 infrastructure charges. No party has alleged that there is no deficit; rather, parties assume that there is some deficit, but that verification of the amount of the deficit requires further documentation and investigation. As discussed supra, the Attorney General calculates that the interim surcharge could be reduced from the proposed \$0.85 to \$0.64 per month by excluding or deferring recovery of the deficit and certain other program costs reflected in the Proposal. AT&T, the Attorney General, Conversent, Comcast, and Sprint raised concerns regarding the lack of documentation of the deficit. In addition, Comcast, Broadview, AT&T, and Conversent

have questioned the impact of Verizon's back-billing of infrastructure costs on the deficit.

Although parties' calls for verification of data concerning program expenses and the deficit are valid, the procedure necessary to perform such verification is inconsistent with the concept of an interim surcharge, and the verification sought is more appropriate for the Department's investigation into the permanent surcharge in Phase II. When the Department opened an investigation into the level of an interim surcharge, it did so in the knowledge that while a thorough investigation of costs and revenues was necessary to ensure a fair and accurate surcharge, it would be unreasonable to permit the E911/disabilities access program to remain unfunded during the pendency of such an in-depth investigation, which by its nature will be time-consuming. By basing an interim surcharge on good-faith estimated data from the parties closest to the E911/disabilities access programs as currently administered, the Department seeks to balance the urgent need for a funding mechanism for E911/disabilities access with the need to avoid burdening the ratepayers with an interim surcharge which is either too high or too low, and which would therefore result in an unnecessary expense in the former instance and an underfunded public safety program in the latter instance.

Although the Department is basing the interim surcharge on estimated data, the Department is confident for purposes of determining an interim surcharge in the estimates because they are provided by the entities who have been and are currently operating and administering E911/disabilities access. Moreover, it is necessary to include estimated capital costs in the interim surcharge, in order to ensure that the interim surcharge be set as close as possible to the permanent surcharge, thus avoiding later rate shock. This is not to say that our

detailed examinations in Phase II will not show some adjustment to the interim surcharge is necessary. That is to be expected, given the nature of estimated data. However, ratepayers will not be harmed because if there is an over-recovery, it will be corrected at the conclusion of Phase II.

For the reasons discussed above, the Department adopts the \$0.85 interim surcharge as proposed by the SETB and Verizon, and directs all wireline local exchange carriers operating in Massachusetts to begin assessing the surcharge on all wireline business and residential voice grade lines as of September 1, 2003.

With regard to the comments on Verizon's back-billing, the Department emphasizes that the question of whether or not Verizon should be permitted to back-bill E911 infrastructure charges to CLECs is beyond the scope of both phases of this investigation. It is an issue of the reasonableness of a Verizon wholesale tariff, and must be addressed in a different forum. What the Department will consider, however, is the extent to which revenues collected from CLECs as a result of the back-billing will offset the deficit, and the extent to which the surcharge may eventually be reduced as a result. This issue will be fully addressed in Phase II.

V. PHASE II

Now that we have concluded our investigation into the appropriate level of the interim surcharge, the Department will begin Phase II of this proceeding. In Phase II, we will investigate and ultimately adopt a permanent surcharge, based on a thorough examination of revenues and costs.

In order to assist the Department in its investigation, the Department requires Verizon to issue a Request for Proposals (“RFP”) for an independent audit of Verizon’s residential directory assistance revenues and E911/disabilities access costs as of June 30, 2003. Because the deficit represents a significant portion of the E911/disabilities access program costs, it is important that the accuracy of the deficit be established. The Department contemplates a process and an audit similar to the audit conducted pursuant to the Department’s Order in D.P.U. 91-68, and Verizon is directed to consult with the Department’s Telecommunications Division when developing the RFP.

Within 30 days from the date of this Order, Verizon shall submit, for Department review and approval, a draft RFP, including a specific outline for publicizing the RFP. Upon Department approval of the RFP, Verizon shall seek competitive bids from qualified firms and individuals. Verizon shall submit the responses to the RFP to the Department and shall recommend at least two firms that it would propose to perform the audit. The Department will select the firm or individuals to perform the audit, and Verizon will enter into a contract with the auditor chosen. Verizon will submit a copy of the signed contract to the Department. The cost of the audit will be charged as an expense to the residential directory assistance fund.

VI. ORDER

Accordingly, after notice, hearing, and consideration, it is hereby

ORDERED: That the \$0.85 interim surcharge proposed by the SETB and Verizon is approved; and it is

FURTHER ORDERED: That all telecommunications companies operating in

Massachusetts shall begin applying the interim surcharge on all wireline business and residential voice grade lines no later than September 1, 2003; and it is

FURTHER ORDERED: That Verizon will submit a draft RFP for an audit of the residential directory assistance fund and E911/disabilities access revenues and expenses within 30 days of the date of this Order.

By Order of the Department,

_____/s/_____
Paul B. Vasington, Chairman

_____/s/_____
James Connelly, Commissioner

_____/s/_____
W. Robert Keating, Commissioner

_____/s/_____
Eugene J. Sullivan, Jr., Commissioner

_____/s/_____
Deirdre K. Manning, Commissioner